PINOLEVILLE INDIAN COMMUNITY GOVERNING COUNCIL
v.
SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-136-A Decided July 16, 1992

Appeal from a decision concerning a tribal election and recall petition and election.

Reversed and remanded.

1. Indians: Tribal Government: Constitutions, Bylaws, and Ordinances--Indians: Tribal Powers: Tribal Sovereignty

In furthering the doctrines of tribal sovereignty and self-determination, the Department of the Interior has recognized the right of Indian tribes initially to interpret their own governing documents and to resolve their own internal disputes, and, in administering the government-to-government relationship with a tribe, has given deference to that tribe's reasonable interpretation of its own laws.

2. Administrative Procedure: Decisions--Board of Indian Appeals: Jurisdiction--Bureau of Indian Affairs: Administrative Appeals: Generally

A letter signed by a Bureau of Indian Affairs official in which the official states that he or she cannot make a decision in a pending matter because of insufficient or inadequate information is subject to administrative review under 25 CFR Part 2 and 43 CFR Part 4, Subpart D.

APPEARANCES: Marie Pollock and Sandra Avila for appellant; Greg Villegas, pro se. 1/

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Pinoleville Indian Community Governing Council seeks review of a July 31, 1991, decision of the Sacramento Area Director, Bureau of

1/ Greg Villegas requested to intervene in this case in a Dec. 3, 1991, letter to the Board. As discussed infra, Villegas is a prime participant in the events leading up to the present appeal. He was treated as a principal in this case by BIA. Accordingly, the Board has determined to accept and consider the letter he has submitted.

Indian Affairs (BIA; Area Director), concerning an October 9, 1990, recall petition, a March 16, 1991, recall election, and a March 30, 1991, tribal election. For the reasons discussed below, the Board of Indian Appeals (Board) reverses that decision and remands this matter to the Area Director for further consideration.

Background

The Pinoleville Indian Community (community) was one of 41 Indian rancherias in California whose members were terminated from their special Indian status pursuant to the California Rancheria Act of August 18, 1958, P.L. 85-671, 72 Stat. 619, as amended by the Act of August 11, 1964, P.L. 88-419, 78 Stat. 390. The community's members contested their termination. In December 1983, the United States District Court for the Northern District of California approved a Stipulation for Entry of Judgment in Hardwick v. United States, Civil No. C 79-1719 SW. Paragraph 4 of the approved stipulation provides:

> The Secretary of the Interior shall recognize the Indian Tribes, Bands, Communities or groups of the seventeen rancherias listed in paragraph 1 [which included the community] as Indian entities with the same status as they possessed prior to distribution of the assets of these Rancherias * * *, and said Tribes, Bands, Communities and groups shall be included on the Bureau of Indian Affairs' Federal Register list of recognized tribal entities pursuant to 25 CFR, Section 83.6(b). Said Tribes, Bands, Communities or groups of Indians shall * * * be deemed entitled to any of the benefits or services provided or performed by the United States for Indian Tribes, Bands, Communities or groups because of their status as Indian Tribes, Bands, Communities or groups.

Pursuant to this stipulation, the community was added to the list of tribal entities published in the Federal Register, 50 FR 6055, 6057 (Feb. 13, 1985).

The community apparently drafted two constitutions, which were submitted to BIA, but were not approved. A copy of an undated constitution was submitted to the Board by appellant. A copy of the same constitution was included in the administrative record. For purposes of this decision, the Board assumes that this is the constitution under which the community is operating. The community also has an election ordinance, which appears to have been adopted by appellant on December 14, 1990.

On or about October 9, 1990, a recall petition was circulated among the community's general membership. The petition, which showed the signatures of 40 tribal members, sought the recall of 6 of appellant's 7 members, including Chairperson Marie Pollock. 2/ The petition reads: "We, the

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2/ Article IV, section 1, of the tribal constitution provides: "The governing body of the Pinoleville Indian Community shall be the Governing

undersigned members of the Pinoleville Indian Community do hereby recall [the named Governing Council members] according to the Pinoleville Constitution Article VI." 3/ It appears that this petition was instigated by Villegas, who at the time was appellant's seventh member, ad/or by his supporters. It further appears that Villegas claimed to be the tribal Chairperson after the circulation of this petition, and took certain actions consistent with that claim, including contacting companies with which the community did business.

On March 16, 1991, a recall election was held. Although no specific information is provided concerning what occurred at this recall election, based upon the allegations made in this case, the Board assumes that it resulted in a vote to recall appellant's six previously identified members.

After learning of the recall election, appellant and/or Pollock apparently sought clarification from BIA as to the identity of the tribal leaders recognized by BIA. By letter dated March 18, 1991, the Superintendent of the Central California Agency, BIA (Superintendent), informed Pollock that BIA still recognized her as the community's Chairperson. 4/

By letter dated March 21, 1991, Pollock informed companies with which the community did business that "Villegas has been removed as a Council Member of the community. He is not to have dealings concerning the community as a council representative to your company or office."

A general tribal election was held on March 30, 1991. No information concerning the results of that election appears in the administrative record or the submissions on appeal.

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fn. 2 (continued)
Council * * *. The Governing Council shall consist of seven (7) members elected at-large from the Pinoleville Indian Community, including four officers, a chairperson, vice-chairperson, secretary and treasurer and three (3) members."

3/ Article VI, section 2, of the tribal constitution provides:

"Upon receipt of a petition signed by at least thirty percent (30%) of the qualified voters of the Pinoleville Indian Community, it shall be the duty of the Governing Council to call and conduct within thirty (30) days an election to consider the recall of an elected official. The election shall be conducted pursuant to the election ordinance."

The Oct. 9, 1990, recall petition apparently predated adoption of the election ordinance.

4/ Villegas discusses these matters on page 2 of his Dec. 3, 1991, letter to the Board: "A recall election was held last fall, and a majority of tribal members recalled [members of] the council. It was not until last month, perhaps two months now, that the BIA let me know that my election as interim tribal chairperson was not recognized by the BIA." Villegas does not otherwise discuss the election at which he alleges he was elected to be interim tribal chairperson.

Apparently, both Pollock and Villegas and/or their supporters contacted the Superintendent concerning the validity of the recall petition and election and of the tribal election. By essentially identical letters dated April 12, 1991, the Superintendent wrote to Pollock and Villegas:

> The purpose of this letter is to respond to numerous requests from members of [the community] for clarification as to the leadership of the tribal government at this time. * * *
>
> In the present situation, a review of the non-BIA approved Pinoleville constitution shows that it is ambiguous on the question of what constitutes a quorum in election matters, i.e. petition, recall, etc. Furthermore, the recently submitted election ordinance is equally vague on these issues. Thus, [BIA] is unable to determine the validity of the 3/30/91 election, the 3/16/91 recall election, and the 10-9-90 recall petition. In addition, our records show that the last valid election recognized by [the community] and [BIA] was in 1988. There were no formal challenges and/or conflicts surrounding that election. General procedures require that another election be held within two years of the previous election. This did not happen. Recently several actions have occurred regarding petitions, recall, and elections, which require the BIA to recognize the results of those actions. The BIA is unable to do this; nor is the BIA able to determine the leadership of [the community] at this time.
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> Because it is necessary that there be a tribal entity with whom the BIA can conduct official business, and because of the urgency of the present situation, it is recommended that all interested parties jointly meet under the auspices of the general council concept. The purpose is to establish an interim council to legally conduct tribal business with the federal government and for redrafting a constitution and an election ordinance that contain clear, concise language about tribal government procedures adopted by the general council. The BIA will recognize the decisions of such a properly convened interim governing body for maintaining a government-to-government relationship with the BIA and for drafting the above mentioned tribal documents.
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> Our records show that [the community] has drafted and submitted two separate tribal constitutions, neither of which have been approved by the BIA; consequently, problems of interpretation have arisen with these dual documents. Now seems to be an opportune time for all interested parties to meet in unison to formalize the tribal governance.
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> The BIA is prepared to assist [the community] in order to resolve this tribal government issue. We are requesting that all tribal voting members meet within the next thirty days with the Superintendent and Tribal Operations staff from Central California

> Agency at a general council meeting of the tribe. * * * [BIA] is willing to provide the needed technical assistance to draft tribal documents which will meet tribal needs and comply with federal regulations.
>
> The BIA is asking you * * * to set a mutually agreeable date, time and location for this important meeting. [5/]

Appellant appealed from this letter to the Area Director. In a June 8, 1991, statement of reasons in its appeal to the Area Director, appellant contended:

> The [BIA] was involved in a recall election in the year of 1986 it was this same Constitution. The election of March 30, 1991 was valid because it was carried out by an election committee as it was called for by the election ordinance. The question what constitutes a quorum, there is no need for a quorum for the elections with our election Ordinance.

On July 31, 1991, the Area Director responded to appellant's appeal:

> After reviewing the documents contained in your Statement of Reasons, and the April 12, 1991, letter from the Superintendent, Central California Agency, we are unable to determine why you believe the information contained in the April 12, 1991, letter is appealable. The Superintendent in his letter * * * indicates, "the [BIA] is unable to determine the validity of the March 30, 1991, election, the March 16, 1991, recall election, and the October 9, 1990, recall petition." The statement indicated that no decision had been made by the Central California

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5/ A Mar. 29, 1991, letter from the Superintendent to a tribal member, which was submitted with appellant's notice of appeal, presents a slightly different statement of the Superintendent's position in regard to the recall election:

"The Recall Election of March 16, 1991, has no basis. The Pinoleville Constitution outlines the process to be followed on this matter. ARTICLE VI - REMOVAL, RECALL and FORFEITURE Section 2, Recall. Upon receipt of a petition signed by at least thirty percent (30%) of the qualified voters of [the community], it shall be the duty of the Governing Council to call and conduct within thirty (30) days an election to consider the recall of an elected official. The election shall be conducted pursuant to the election ordinance.

"This agency has not reviewed the process and associated documents dated 3/21/91 because we have not received an updated, accurate and correct voters and general membership list to enable us to offer an opinion about the validity of the process."

The Superintendent's last sentence appears to be in conflict with his first sentence.

Agency, rather the Agency was providing information and suggesting a way to resolve the Pinoleville Rancheria internal dispute.

Based on the records presented and the information available to this office at the time of review, we are unable to determine that the Superintendent, Central California Agency had made a decision that was appealable; therefore, we are denying your request for appeal.

The Board received appellant's notice of appeal from this denial on September 6, 1991. Statements were filed on appeal by appellant and by Villegas. 6/

Discussion and Conclusions

[1] From a review of the administrative record and the documents submitted on appeal, it is apparent that the community's tribal government problems are long-standing and result from a sharp division within the tribal membership. The Board has frequently stated that, in resolving internal disputes, a tribe has the right initially to interpret its own governing documents, and that the Department must give deference to a tribe's reasonable interpretation of its own laws. The Board has also stated, however, that the Department has both the authority and the responsibility to interpret tribal law when necessary to carry out the government-to-government relationship with the tribe. See, e.g., Greendeer v. Minneapolis Area Director, 22 IBIA 91 (1992); United Keetoowah Band of Cherokee Indians in Oklahoma v. Muskogee Area Director, 22 IBIA 75 (1992), and cases cited therein.

[2] The Area Director did not reach the merits of this appeal because he found that the Superintendent's conclusion that he could not make a decision was not a "decision" within the meaning of 25 CFR Part 2. However, it is clear that the Superintendent did more than impart information to the parties, as the Area Director suggests. Instead, the Superintendent determined that the community's constitution and election ordinance were ambiguous and, therefore, inadequate to allow a decision. The Superintendent's failure to make a decision was the functional equivalent of a

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6/ Villegas states at pages 3-4 of his Dec. 3, 1991, letter:

"I seek to intervene to oppose BIA recognition of * * * Pollock and to oppose Sandra Avila's appeal. It is incredible that the BIA will refuse to intervene in tribal matters in ways that will help the tribe, and then it will interfere in other ways, apparently randomly.

"I seek to intervene to file a cross-complaint to appeal the BIA's refusal to recognize the recall election and to appeal its help with the membership list, a Constitution, or a voting ordinance. I wish to cross-complain against the BIA's refusal to examine the council's agreement to have a combined industrial designation for trust land where people are supposed to live and have a community life."

decision declining to recognize the results of the recall petition and various elections. This determination is a decision that is subject to administrative review. Oglala Sioux Tribe v. Aberdeen Area Director, 16 IBIA 201 (1988). The Area Director's decision must be reversed and this matter remanded to him for further consideration.

In considering this matter on remand, BIA is referred to the Board's decisions holding that a valid tribal election renders moot questions concerning prior tribal leadership. See, e.g., Decorah v. Minneapolis Area Director, 22 IBIA 98 (1992); Peters v. Sacramento Area Director, 21 IBIA 74 (1991); Penney v. Aberdeen Area Director, 20 IBIA 90 (1991); Thlopthlocco Tribal Town v. Acting Muskogee Area Director, 19 IBIA 183 (1991); Forest v. Sacramento Area Director, 18 IBIA 372 (1990); Fort McDermitt Paiute Shoshone Tribe v. Acting Phoenix Area Director, 16 IBIA 221 (1988). As the Board has repeatedly stated, it declines to address a moot issue "where, in order to render a decision on the merits, it would be required to interpret tribal law." Sahmaunt v. Anadarko Area Director, 17 IBIA 60, 64 (1989). If the March 30, 1991, election was valid, there may be no need for a decision on the validity of the recall petition and/or election. Therefore, BIA should first consider whether the March 30, 1991, tribal election was valid. If it was, BIA should recognize the results of that election. 7/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the July 31, 1991, decision of the Sacramento Area Director is reversed, and this matter is remanded to him for further consideration in accordance with this opinion.

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Kathryn A. Lynn
Chief Administrative Judge

I concur:

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Anita Vogt
Administrative Judge

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7/ The Superintendent stated that he could not make a decision regarding the "petition, recall, etc." because both the tribal constitution and election ordinance were ambiguous concerning "what constitutes a quorum in election matters." Presumably, the Superintendent intended this statement also to apply to the Mar. 30, 1991, tribal election, since he gave no other explanation for his inability to determine the tribal leadership based upon the results of that election.

The Board has carefully reviewed both the tribal constitution and the election ordinance, and has been unable to identify which provisions in either document the Superintendent examined in order to determine that a quorum was required for the results of a tribal election to be valid. In its June 8, 1991, statement of reasons to the Area Director, quoted in text, supra, appellant contended that the constitution and election ordinance did not require a quorum in a tribal election.